

NANCY HERSH – SBN 49091
CHARLES C. KELLY, II – SBN 122253
HERSH & HERSH
A Professional Corporation
601 Van Ness Avenue, Suite 2080
San Francisco, CA 94102-6396
Telephone: (415) 441-5544

Attorneys for Plaintiff

ENDORSED
FILED
ALAMEDA COUNTY

FEB 21 2012
CLERK OF THE SUPERIOR COURT
Anita Dhir

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

JOHN BENNETT GIBSON, AN
INDIVIDUAL, BY AND THROUGH HIS
GUARDIAN AD LITEM, MADELYN
BENNETT GIBSON,

Plaintiff,

vs.

BERKELEY STUDENT COOPERATIVE,
a not for profit California Corporation,
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, and DOES 1 TO 50,
INCLUSIVE,

Defendants.

CASE NUMBER

RG12617776

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

1. PREMISES LIABILITY
2. DANGEROUS CONDITION OF
PUBLIC PROPERTY — Gov. Code
Section 835 et seq.
3. NEGLIGENT HIRING,
SUPERVISION AND/OR
RETENTION
4. NEGLIGENT VIOLATION OF
STATUTORY DUTY

Comes now Plaintiff John Bennett Gibson, by and through his guardian ad litem,
Madelyn Bennett Gibson, and demands a jury trial and pleads as follows:

IDENTITY AND CAPACITY OF THE PARTIES

I. Plaintiff John Bennett Gibson is 23 years of age with a severe brain injury as
a result of Defendants' actions and omissions giving rise to this lawsuit. Plaintiff lives with

1 his mother Madelyn Bennett Gibson and father Eric Gibson in San Diego County,
2 California. Plaintiff requires 24 hour, 7 days a week nursing and custodial care.

3 2. Guardian ad Litem, Madelyn Bennett Gibson is the biological mother of
4 Plaintiff.

5 3. Defendant Berkeley Student Cooperative ("BSC") is a not for profit housing
6 cooperative organized under the laws of the State of California. Defendant BSC provides
7 residential housing to students of the University of California Berkeley students. Defendant
8 BSC is owned and managed by its member residents by and through its Board of Directors.

9 4. The Board of Directors adopts, ratifies, and implements all BSC-wide
10 policies.

11 5. Defendant Regents of the University of California ("REGENTS") governs
12 and operates the University of California, Berkeley. Defendant REGENTS owns the real
13 property and buildings located at 2600 Ridge Road, Berkeley, California. Defendant
14 REGENTS leases 2600 Ridge Road and the buildings thereon to Defendant BSC.

15 6. At all relevant times, Defendant BSC operated, maintained, and managed the
16 CLOYNE COURT HOTEL ("CLOYNE") at 2600 Ridge Road, a cooperative residence for
17 University of California, Berkeley students. CLOYNE is managed and operated by its
18 House Council, which is comprised of all residents and includes a member of Defendant
19 BSC's Board of Directors. The House Counsel adopts, ratifies and implements CLOYNE's
20 policies, including, but not limited to, security and drug and substance abuse education and
21 enforcement.

22 7. Defendants Does 1 through 50 are unknown to Plaintiff but were in some
23 manner responsible for the acts and conduct alleged herein resulting in Plaintiff's injuries
24 and damages.

25 8. At all relevant times herein, Defendants Does 1 through 50 were, Board of
26 Directors, property managers, employees and/or agents of Defendants and were each acting
27

1 in the course and scope of such employment or agency in doing or not doing all acts alleged
2 herein.

3 **FACTUAL ALLEGATIONS**

4 9. Plaintiff hereby re-pleads all preceding Paragraphs with the same force and
5 effect as if the same had been fully set forth herein.

6 10. In the Spring of 2010, Defendants BSC, REGENTS and Does 1-50, knew or
7 should have known, by exercising reasonable care and diligence, of on-going and pervasive
8 drug trafficking and drug abuse at CLOYNE, which activities had been occurring at
9 CLOYNE for many years.

10 11. Despite Defendants' knowledge and awareness of the drug trafficking and
11 drug abuse problem occurring at CLOYNE, these Defendants, and each of them, failed to
12 take any action to stop or deter such conduct by residents and members at CLOYNE and
13 failed to take even minimal steps to stop or deter such conduct at CLOYNE by, for
14 example, adopting and implementing effective drug abuse policies, adopting and
15 implementing effective drug educational programs, implementing and enforcing a zero-
16 tolerance approach to such conduct, and/or placing a professional non-student property
17 manager in residence at CLOYNE with the mandate and power to enforce anti-drug
18 policies.

19 12. Despite Defendants' knowledge of the drug trafficking and drug abuse
20 occurring at CLOYNE, Defendant REGENTS continued to lease 2600 Ridge Road to
21 Defendant BSC without creating, implementing and enforcing drug abuse policies or
22 requiring Defendant BSC to create, implement, and enforce policies or procedures to stop
23 and/or deter the on-going drug trafficking and drug abuse occurring at CLOYNE.

24 13. Despite Defendants' knowledge of the drug trafficking and drug abuse
25 occurring at CLOYNE, Defendant BSC ratified and authorized CLOYNE to adopt house
26 rules, which among other things required residents to seek permission before contacting
27

1 police and first-responders in the event of an emergency and to do so only as a last resort,
2 and which allowed drug dealing and trafficking to proceed unchecked.

3 14. Defendants' failure to take any action created a "wild-west" environment at
4 CLOYNE where residents believed that "anything goes" and there would be no
5 accountability for illegal drug trafficking or abuse.

6 15. As a consequence of Defendant's actions and omissions, drug trafficking
7 and abuse continued unabated at CLOYNE into the Spring of 2010, thereby creating an on-
8 going dangerous condition on the premises of CLOYNE, placing all residents including
9 Plaintiff at an increased risk of injury.

10 16. On or about March 17, 2010, Plaintiff alleges on information and belief that
11 his roommate furnished him with illegal drugs which he ingested along with his roommate
12 and roommate's girlfriend.

13 17. At all relevant times, Defendants, and each of them, through its Board of
14 Directors, employees, agents, and members/owners knew or should have known that
15 Plaintiff's roommate possessed, dealt, used and trafficked in illegal drugs. However,
16 Defendants failed to take any action against the roommate in order to stop or prevent him
17 from doing so.

18 18. After ingesting these illegal and dangerous drugs, Plaintiff remained in his
19 room.

20 19. The following morning, around 9:00 am, Plaintiff's roommate observed
21 Plaintiff lying in his bed, looking uncomfortable, and appearing to be having a bad dream.
22 Approximately two hours, around 11:00 am, Plaintiff's roommate observed Plaintiff and
23 "he did not appear to be breathing and had bluish lips." Plaintiff's roommate contacted
24 another resident, who decided against taking Plaintiff to the hospital and instead attempted
25 CPR along with another resident. The residents then moved Plaintiff into another room and
26 waited approximately two hours before calling 911.

1 20. Plaintiff suffered an anoxic brain injury due to cardiac arrest as a result of
2 ingesting the illegal drugs provided by his roommate and as a result of CLOYNE's
3 residents' failure to call 911 promptly pursuant to CLOYNE's house policies. Plaintiff's
4 injuries are permanent and debilitating, requiring 24 hour, 7 days a week nursing and
5 custodial care. Plaintiff has incurred and will continue to incur medical and custodial
6 expenses.

7 21. Further, Plaintiff's injuries have caused and will continue to cause lost
8 wages, earnings, and income.

9
10 **FIRST CAUSE OF ACTION**
11 **[Premises Liability]**
12 **(Against Defendants Berkeley Student Cooperative and DOES 1-50)**

13 22. Plaintiff hereby re-pleads all preceding Paragraphs with the same force and
14 effect as if the same had been fully set forth herein.

15 23. Defendants, and each of them, lease, occupy, possess, manage, operate and
16 maintain the premises located at 2600 Ridge Road, Berkeley, California.

17 24. Defendants, and each of them, were under a duty to exercise reasonable care
18 in the use, operation, maintenance, and/or management of said premises so as to avoid
19 exposing Plaintiff to an unreasonable risk of harm, including reasonably foreseeable
20 harmful and criminal acts of other tenants.

21 25. Defendants, and each of them, breached the duty of ordinary care owed to
22 Plaintiff and were negligent in the use, operation, management and maintenance of said
23 premises by their acts and omissions alleged herein.

24 26. Defendants' negligence caused Plaintiffs damages and injuries as herein
25 alleged.

26 27. Plaintiff is informed and believes that Defendants, and each of them, acted in
27 conscious and willful disregard of his rights and safety by their actions and omissions
28 alleged in paragraphs 10-15, above, entitling him to exemplary damages.

1 **WHEREFORE**, Plaintiff seeks compensatory damages, both special and general,
2 and exemplary damages against Defendants, and each of them.

3 **SECOND CAUSE OF ACTION**
4 **[Negligent Violation Of Statutory Duty]**
5 **(Against Defendants Berkeley Student Cooperative and DOES 1-50)**

6 28. Plaintiff hereby re-pleads all preceding Paragraphs with the same force and
7 effect as if the same had been fully set forth herein.

8 29. Defendants, and each of them, lease, occupy, possess, manage, operate and
9 maintain the premises located at 2600 Ridge Road, Berkeley, California.

10 30. At all relevant times. Defendants were subject to California Civil Code
11 Section 1941.1 and Health and Safety Code Section 17920.3. Section 1941.1 requires a
12 premises' owner or possessor to maintain its premises in habitable condition. According to
13 Section 1941.1 and Section 17920.3(c), a premise is not in habitable condition if the owner
14 allows the presence of an ongoing nuisance, such as illegal drug trafficking and abuse.

15 31. Defendants, and each of them knew, CLOYNE residents conducted illegal
16 activity, including but not limited to, dealing, trafficking and using drugs creating an
17 ongoing nuisance which Defendants knew of, or with reasonable diligence should have
18 know of, but failed to abate.

19 32. Civil Code Section 1941.1 and Health & Safety Code Section 7920.3 were
20 designed to protect tenants, like Plaintiff, and to ensure their safe enjoyment of the
21 premises.

22 33. As a direct and proximate result of Defendants' violation of their statutory
23 duty, Plaintiff was prevented from safe and quiet enjoyment of the premises and suffered
24 injury, damage, loss, and/or harm, according to proof.

25 **WHEREFORE**, Plaintiff seeks compensatory damages, both special and general,
26 against Defendants, and each of them.

THIRD CAUSE OF ACTION
[Negligent Hiring, Supervision and/or Retention]
(Against Defendants Berkeley Student Cooperative and DOES 1-50)

34. Plaintiff hereby re-pleads all preceding paragraphs with the same force and effect as if the same had been fully set forth herein.

35. Defendants, and each of them, were each under a duty to exercise ordinary care in the hiring, training, supervision, review, and/or discipline of each of their agents, members, owners, or employees responsible for managing, operating and maintaining CLOYNE in order to avoid exposing Plaintiff to an unreasonable risk of harm.

36. Defendants, by their acts or omissions, each breached the aforesaid duty of ordinary care owed to plaintiffs and plaintiffs' decedent in their hiring, training, review and supervision of the on-site management, members, agents, employees and owners and in their provision of security services to tenants and thus breached their duty of care to Plaintiff.

37. As a direct and proximate result of the negligence of each Defendant, Plaintiff suffered injury, damage, loss, and/or harm, according to proof.

WHEREFORE, Plaintiff seeks compensatory damages, both special and general, against Defendants, and each of them.

FOURTH CAUSE OF ACTION
[Dangerous Condition of Public Property]
(The Regents and DOES 1-50)

38. Plaintiff hereby re-pleads all preceding paragraphs with the same force and effect as if the same had been fully set forth herein.

39. Defendants REGENTS and DOES 1-50, and each of them, owned, maintained, managed, and operated the premises known as CLOYNE located at 2600 Ridge Road, Berkeley, California.

40. As alleged more fully above, at all relevant times, a dangerous condition of public property existed at CLOYNE under Government Code Section 835 et seq. caused

1 by, among other things, (i) on-going illegal and criminal conduct of residents and guests,
2 including pervasive drug trafficking, dealing and abuse, (ii) inadequate and negligent drug
3 abuse policies and procedures to stop or deter such activities and to educate residents about
4 the dangers and effects of drug abuse, (iii) inadequate and negligent security and safety
5 policies to stop or deter such activities and to protect residents in the event of an overdose
6 of illegal drugs, and (iv) inadequate and negligent on-site professional management on the
7 premises with the mandate and power to stop or deter such activities and to educate
8 residents about the dangers of illegal drugs and how to promptly and properly handle and
9 react to an overdose of illegal drugs.

10 41. The dangerous condition of public property described above created a
11 reasonably foreseeable risk of the kind of injury that Plaintiff suffered herein.

12 42. Defendants REGENTS and Does 1-50, and each of them, knew or had
13 constructive knowledge that the dangerous condition of public property described above
14 existed at CLOYNE in the Spring of 2010.

15 43. Defendants REGENTS and Does 1-50, and each of them, negligently created
16 the dangerous condition by and through their actions and omissions alleged herein.

17 44. The dangerous condition of public property caused Plaintiff's injuries and
18 damages herein alleged.

19 45. At all times relevant herein, Defendants DOES 1-50 were the agents and
20 employees of the other defendants and acted within the scope of their agency and/or
21 employment of each other and of the REGENTS.

22 **WHEREFORE**, Plaintiff seeks compensatory damages, both special and
23 general, against Defendants, and each of them.

24 //

25 //

PRAYER

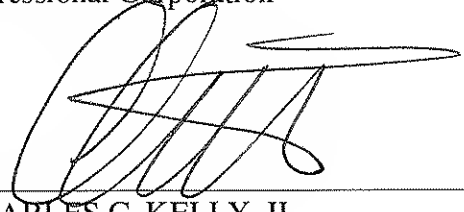
WHEREFORE, Plaintiff demands judgment against Defendants, and each of them,
for the following:

1. General damages and Special damages according to proof;
2. Hospital, doctor, therapy, custodial and medical costs according to proof;
3. Damages for loss of earnings, income and wages according to proof;
4. Exemplary damages in an amount sufficient to deter Defendant BSC's wrongful conduct in the future;
5. For costs of suit herein;
6. Such other relief as the Court may deem just and proper.

DATED: February 17, 2012

HERSH & HERSH
A Professional Corporation

By


CHARLES C. KELLY, II
Attorneys for Plaintiffs